

EXHIBIT K

1
2 UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

CERTIFIED COPY

3 -----X

In re:

4 MOTORS LIQUIDATION COMPANY,
et al, f/k/a General Motors

Chapter 11

5 Corporation, et al,

Case No. 09-50026

Debtors,

(REG)

6 -----X

MOTORS LIQUIDATION COMPANY

7 GUC TRUST,

Plaintiff,

8 v.

Case No.: 12-0

APPALOOSA INVESTMENT

9 LIMITED PARTNERSHIP I, et al.,

Defendants.

10 -----X

11
12 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
13 PURSUANT TO PROTECTIVE ORDER

14
15 DEPOSITION OF THOMAS M. MAYER, ESQ. and
16 30(b)(6) DEPOSITION OF KRAMER LEVIN NAFTALIS &
17 FRANKEL, LLP, by THOMAS M. MAYER, ESQ.

18 New York, New York

19 May 29, 2012

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24 Reported by:

Bonnie Pruszyński, RMR

25 JOB NO. 50126

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May 29, 2012

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10:03 a.m.

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DEPOSITION OF THOMAS M. MAYER and

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30(b)(6) DEPOSITION OF KRAMER LEVIN NAFTALIS &

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FRANKEL, LLP, by THOMAS M. MAYER, ESQ., held at the

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offices of Greenberg Traurig, LLP, 200 Park Avenue,

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New York, New York, before Bonnie Pruszyński, a

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Registered Professional Reporter, Registered Merit

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Reporter, Certified LiveNote Reporter and Notary

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Public of the State of New York.

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2 Q And what was your understanding of
3 that, of that proposed exchange -- of that
4 exchange offer?

5 A I didn't have an understanding of the
6 particulars of the exchange offer, because I was
7 buried in Chrysler, and because my understanding
8 was that Paul, Weiss was representing the
9 bondholders.

10 Q But you didn't -- so, you didn't make
11 any efforts to familiarize yourself with the terms
12 or even in a general way with the terms of the
13 exchange offer?

14 A Once we were retained --

15 MR. FISHER: Objection as to form.

16 Go ahead.

17 A Once we were retained in GM, I did.
18 But I don't recall doing so prior to that
19 retention.

20 Q Okay. So, after the filing on
21 June 1st, 2009, what steps did you take to
22 familiarize yourself with the situation?

23 MR. FISHER: Objection as to form.

24 What time period after June 1st, and what
25 situation are you talking about?

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2 testimony?

3 A I did not actually testify to that.
4 What I testified is that I assigned a team of
5 lawyers to become familiar with the manifold parts
6 of the General Motors situation. And I -- that's
7 what I testified to.

8 MR. FISHER: Just wait until there is
9 a question.

10 Q I will go back to the question. It's
11 on --

12 MR. ZIRINSKY: How do I refer to
13 that? Page 23, line 11, at 10:32:18.

14 "Question: But you didn't -- so you
15 didn't make any efforts to familiarize
16 yourself with the terms or even in a general
17 way with the terms of the exchange offer?

18 "Answer: Once we were retained --

19 "Mr. Fisher: Objection as to form.
20 Go ahead.

21 "Once we were retained in GM, I did,
22 but I don't recall doing so prior to that
23 retention." Answer.

24 "Okay."

25 A I assigned a team of people to look

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2 at the various documents. This was one of them.
3 And I probably looked at this shortly after the
4 filing, but not with any great focus. I don't
5 know what the time sheets reflect, but I am sure I
6 have looked at this document at some point. I
7 am -- and I know I assigned people to look at the
8 various filings.

9 Q Okay. Let's put this aside for a
10 moment. We will come back to this exhibit a
11 little bit later.

12 So, going back to, you are now
13 retained on June 3rd, as in your words, or in
14 substance, you have testified, you assembled a
15 team of lawyers from your firm --

16 A Um-hum.

17 Q -- to work on the General Motors
18 matter.

19 A Um-hum.

20 Q Fair summary so far?

21 A Yes.

22 Q Okay. So, what steps did Kramer
23 Levin take at that time to become familiar with
24 the case and what would be the issues in the case?

25 A Various teams of lawyers went out and

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2 Q Was not going to be?

3 A That's correct.

4 Q So, the consideration to the
5 unsecured creditors was quite well defined?

6 A Yes.

7 Q At that time.

8 A Yes.

9 Q Were you also aware that certain
10 avoidance actions and claims would be transferred
11 to New GM?

12 A Yes.

13 Q Was that one of your objections?

14 A It didn't end up being an objection.
15 As you know, the issue of who owns the lawsuit
16 against the banks is currently on appeal to the
17 District Court. As far as we knew, we had a deal
18 that the lawsuit against the banks would stay
19 behind and belong to the unsecured creditors, and
20 we documented that deal. Treasury has since
21 changed that version of events.

22 With respect to all other avoidance
23 actions, yes, we understood they were going to new
24 GM.

25 And incidentally, to the extent they

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2 weren't going to New GM, they were staying behind
3 for the DIP lender, which from our perspective was
4 a distinction without a difference.

5 Q Were there -- when did the sale
6 hearing commence in the case?

7 A When did it commence? It was late in
8 the last week of June. I don't have the date in
9 my head.

10 Q June 28 sound like a familiar date?

11 A That sounds right, yes.

12 Q So, between this period of time we
13 have been discussing and June 28, were there
14 subsequent meetings with Weil Gotshal or other
15 representatives of General Motors that you or
16 other members of the --

17 A Harvey -- we had one very big meeting
18 for the whole committee at Weil Gotshal, at which
19 the then CEO (sic) of GM made a presentation.

20 Q Who was that?

21 A The former CFO was the successor to
22 Wagner, and I can't remember his name. This is
23 terrible.

24 He made a presentation. We had
25 discussions about various parts of the deal, and

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2 about in connection with the sale. And it wasn't
3 like a legal brief that sourced where things came
4 from, because we didn't have time.

5 Q Okay.

6 A So I -- my recollection, which I have
7 to refresh, is that no, we didn't source -- the
8 memos that I am recalling, we were not sourcing
9 any particular place where information came from.

10 Q Well, what was the purpose of
11 reviewing SEC filings?

12 A Well, we needed to advise the
13 committee on issues that in our view they needed
14 to think about as to whether they cared enough to
15 push hard to change in connection with the sale.

16 Q And you thought the SEC filings would
17 be helpful or a review of those filings would be
18 helpful in that regard?

19 A It's a standard part of diligence.

20 Q Do you know whether or not these
21 memos were given to your counsel Mr. Fisher and
22 his firm in connection with this deposition or
23 your document production in this case?

24 A I have no idea.

25 MR. FISHER: Objection as to form, to

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2 requisites," and then it goes on with several
3 other items.

4 A Um-hum.

5 Q Can you tell us what you were
6 referring to, what you were referring to in this
7 time entry?

8 A I think so. In connection with what
9 in particular?

10 Q First of all, do you recall this team
11 meeting?

12 A This refreshes my recollection.
13 There were a lot of meetings. I'm sure this
14 happened.

15 Q What about the timeline to SOFa, 8-K,
16 bar date and other pre-plan requisites?

17 A SOFa stands for Statement of
18 Financial Affairs, and the 8-K is a reference to
19 an 8-K that GM was going to file, New GM was going
20 to file pursuant to an agreement that it either
21 had worked out or was in the process of working
22 out with the Securities and Exchange Commission.

23 Q Was that 8-K in fact filed?

24 A I believe it was, yes.

25 Q Do you recall approximately when it

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2 was filed?

3 A Not as I sit here.

4 Q Okay. Do you recall what that 8-K
5 would have disclosed or did disclose?

6 A I have a general recollection. This
7 was a unique transaction in many ways, including
8 under the securities laws, and New GM as a new
9 entity had various security issues it needed to
10 work out with the SEC about when it would resume
11 making public filings, and this 8-K was kind of an
12 attempt to put New GM back in the public domain
13 with public information.

14 It was, it was important to a number
15 of constituencies that it do so. It was pretty
16 important to us. It was important to Treasury.

17 Q Okay. Thank you.

18 Would you turn to Invoice 523067.

19 MR. FISHER: Let me help you.

20 523067.

21 Q It's page 66.

22 MR. FISHER: Sixty-six, you said?

23 I'm sorry.

24 A Okay.

25 Q There is an entry on June 5, 2009, of

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2 Creditors Committee. Not that I recall.

3 Q What was your understanding as to why
4 the Canadian government was present at that
5 meeting?

6 A They were a co-lender under the DIP
7 facility and a co-owner of the stock of New GM.

8 Q But this meeting occurred prior to
9 the sale; correct?

10 A Yes.

11 Q And do you know why the Canadian
12 government was participating in the loans to GM
13 and in the acquisition of GM by New GM?

14 A GM had operations in Canada. It was
15 in -- the Canadian government had made a
16 determination to participate in the rescue of a
17 company that had operations in Canada.

18 Q Did you have any understanding as to
19 why it was important to the Canadian government to
20 participate?

21 A GM Canada employed a lot of people.

22 Q It was a big operation?

23 A I believe so.

24 Q Do you have any understanding as to
25 what, approximately what proportion of GM's total

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2 connection with Smurfit. It's possible that we
3 did.

4 Q Why would you have been discussing GM
5 in connection with Smurfit?

6 A Because Smurfit was moving into plan
7 gear in the summer of 2009, and a fight was
8 looming over a double claim in the Smurfit case,
9 and I remember Dan saying to me that we shouldn't
10 get in his way in Smurfit, and he mentioned -- he
11 did mention that he got a settlement in GM. He
12 didn't describe the settlement, that I recall.

13 And I said to him, Dan, in GM, Canada
14 wasn't in bankruptcy, and in Smurfit, Canada is in
15 bankruptcy, and the situation is very different.

16 I can't remember whether I brought up
17 the argument that turned out to be the winning
18 argument in Smurfit, at that moment. Probably
19 not.

20 That's what I recall.

21 Q So, then Mr. Gropper did tell you he
22 held notes in GM Nova Scotia?

23 A By July 28th, this e-mail suggests
24 that he did, and I suspect that he must have, yes.

25 Q So, then you would have been aware at

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2 this time that in fact there were notes issued,
3 there were Nova Scotia notes issued by GM?

4 A That is a fair statement, yes. I
5 must have been aware in July, yes.

6 Q Is it possible that you were aware
7 earlier than July?

8 A That there were Nova Scotia notes?

9 Q Yes.

10 A I was probably aware that there were
11 Nova Scotia notes issued prior to July, yes.

12 Q How would you have become aware of
13 that?

14 A We got tables of projected claims
15 from Paul, Weiss, which were the basis for their
16 settlement, and Nova Scotia may have been listed
17 on those. That is the only thing I can think of.
18 There probably was a list of claims.

19 MR. ZIRINSKY: Would you mark this as
20 Exhibit 9.

21 (KL Exhibit 9 marked for
22 identification as of this date.)

23 A Okay.

24 Q Mr. Mayer, can you identify what's
25 been marked as Exhibit 9?

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2 A Because it didn't relate to the
3 object of the negotiation during that 30 days,
4 because it doesn't contain certain other facts
5 that came to light later about the timing of the
6 payment and where the payment actually came from,
7 and because we were focused on other things that
8 were doable with respect to Treasury and New GM
9 and not with respect to claims against the estate.

10 Q What other facts came to light later
11 about the timing of the payment?

12 A In October of 2009, for the first
13 time, the entire package of the Nova Scotia
14 settlement was brought to our attention by Weil
15 Gotshal. The exact circumstances of what prompted
16 that call, I don't know. We were focusing at that
17 point on what claims were going to be asserted
18 against the estate.

19 And the existence of a \$2.6 billion
20 amount by GM Nova Scotia, A, it was brought to our
21 attention; B, what was brought to our attention
22 was the payment either just before or just after
23 the filing of money from GM itself to fund this
24 payment. That had not previously -- we were not
25 previously aware of that.

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2 know that was the first time we focused on it.

3 Q By the way, do you know if that
4 payment was made by Old GM to GM Canada before or
5 after GM filed for bankruptcy?

6 A Based on the review of documents for
7 this deposition, I believe it was made slightly
8 before.

9 Q Days before?

10 A Yeah.

11 Q Okay. Do you know whether that loan
12 was ever repaid by GM Canada to Old GM?

13 A I have no personal knowledge. I
14 would be surprised if it was.

15 Q Okay. If it had been repaid, how
16 would that have affected your view?

17 MR. FISHER: Objection as to form.

18 A I can't answer the question, because
19 it goes into the nature of the complaint that
20 conflicts counsel filed. In terms of, would it
21 have affected our view when, when we filed the
22 complaint, no. I mean, we weren't focused on
23 anything related to Canada in connection with --
24 during the 30 days prior to the sale.

25 Q You said earlier that -- you

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2 A Um-hum.

3 Yes.

4 Q Okay. Does reading this paragraph
5 three refresh your recollection as to your
6 knowledge of the settlement with the Nova Scotia
7 noteholders back in June of 2009?

8 A No. I don't believe I personally had
9 knowledge of our focus on the Nova Scotia
10 settlement in June of 2009.

11 Q But others at Kramer Levin had read
12 this document?

13 A Others at Kramer Levin read this
14 document.

15 Q And not to be offensive, but you
16 would have to be blind not to read this provision
17 or this language in this document if you were
18 charged with reviewing this document in connection
19 with your representation of the Creditors Credit
20 Committee; is that correct?

21 MR. FISHER: Objection.

22 A I assume that other people in my team
23 read these -- read this paragraph, yes.

24 Q And would have been familiar with
25 what was contained in here?

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2 A I think they would have read it.
3 They would have made a judgment as to whether or
4 not it needed to be included in the briefing memos
5 that they passed up the line.

6 Q Did you have a process or procedure
7 at or procedures at Kramer Levin where various
8 members of the team would share among the team
9 information derived by each of them from there
10 review of documents and other information provided
11 in connection with their due diligence?

12 A It was -- there were different work
13 streams, and people submitted memos basically to
14 me, and then I reviewed them and forwarded them on
15 to the committee. We didn't have giant team
16 meetings every day, no. Occasionally, but there
17 wasn't --

18 Q But you had procedures and processes
19 in place that you deemed to be appropriate and
20 adequate for your responsibilities in this case?

21 MR. FISHER: Objection as to form.

22 A I assigned people to look at things
23 that we believed needed to be -- I assigned people
24 to tasks we believed needed to be done in the very
25 short time frame provided to object to or

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2 negotiate a resolution to the sale transaction.

3 Q But you were focused on the sale
4 agreement, and the sale of assets --

5 A Correct.

6 Q -- and this is an important document.
7 It's part of the sale agreement, isn't it?

8 A That is correct. It is part of the
9 sale agreement.

10 Q Yes, it is.

11 Now, paragraph three says, in terms
12 of the disclosures, that "sellers may do all
13 things necessary and appropriate in furtherance of
14 consummation of the Nova Scotia settlement"; is
15 that correct?

16 A Yes, it does.

17 Q Okay. And then it goes on to say,
18 "Nova Scotia settlement means the following
19 actions and outcomes. Entry A, entry by General
20 Motors Nova Scotia Finance Company, a Nova Scotia
21 unlimited company, and GMCL," that's GM Canada,
22 "into an agreement, the GMCL loan settlement, with
23 respect to the complete satisfaction and discharge
24 of the loan agreements between GMCL and GMNS, each
25 dated July 10, 2003, in exchange for a cash

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2 Q You understand that you are here as a
3 30(b)(6) witness --

4 A I am.

5 Q Let me just finish the question,
6 please.

7 Testifying not only to your personal
8 knowledge, but as to the collective knowledge of
9 your law firm?

10 A I do.

11 Q Mr. Mayer, I'm going to mark as an
12 exhibit -- and I think we are up to number 13.

13 MR. ZIRINSKY: Mark this as Exhibit
14 Number 13 for identification.

15 (KL Exhibit 13 marked for
16 identification as of this date.)

17 Q Can you identify what's been marked
18 as Exhibit 13?

19 A Yes. This is the final order
20 pursuant to Bankruptcy Code Sections 105(a), 361,
21 362, 363, 364, and 507, and Bankruptcy Rules 2002,
22 4001, and 6004(a) -- I'm sorry, 6004, A, approving
23 a DIP credit facility and authorizing the debtors
24 to obtain post-petition financing pursuant
25 thereto; B, granting related liens and

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2 super-priority status; C, authorizing the use of
3 cash collateral, and D, granting adequate
4 protection to certain pre-petition secured
5 parties.

6 Q Okay. Were you involved in this
7 matter in June of 2009, on behalf of the
8 committee?

9 A Yes.

10 Q And what was your role?

11 A We were involved in negotiations with
12 Treasury and through Treasury Canada with respect
13 to the extension of DIP credit and the wind-down
14 lending facility. This is, I believe, the third
15 of three orders relate -- the second of three
16 orders, the middle of three orders relating to
17 that topic, and we were involved in negotiating
18 certain terms of this document.

19 Q Okay. You were personally involved
20 on behalf of the committee?

21 A I had personal involvement. I think
22 Bob Schmidt led the charge, but I know a lot about
23 this order.

24 Q Okay. Did you see drafts of these
25 documents before they were finalized and approved

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2 by the court?

3 A Yes, I think I did.

4 Q By the way, what was the date on
5 which the order was entered?

6 A June 25th, according to the signature
7 page here.

8 Q 2009?

9 A Yes.

10 Q Okay. Would you turn to the
11 Exhibit 1 to the DIP credit facility?

12 A Um-hum.

13 Q And page numbers are referenced
14 where?

15 If you look at the top, page
16 number -- it's Exhibit 1, page 106, at the top
17 right. Do you see that?

18 A Yes.

19 Q Okay. Would you read down to
20 paragraph seven.

21 A That says "consent"?

22 Q Yes. And would you read that aloud,
23 please, for the record.

24 A "The required lenders hereby consent
25 to GM Nova Scotia's having provided a consent to

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2 an order under the Bankruptcy and Insolvency Act
3 Canada as set forth in Section 6B of that certain
4 lock-up agreement, dated as of June 1, 2009. As
5 in effect on such date, the lock-up agreement, by
6 and among the borrowers, General Motors Nova
7 Scotia Finance Company, a Nova Scotia unlimited
8 company ('GM Nova Scotia'); General Motors of
9 Canada Limited, a Canadian federal corporation
10 ('GM Canada'); GM Nova Scotia Investments Limited,
11 a Nova Scotia company and federal corporation" --
12 oh, I'm sorry, I'm skipping lines -- "and certain
13 beneficial owners of notes issued by GM Nova
14 Scotia, provided that:

15 "One, if the conditions required for
16 effectiveness of the waivers, releases and
17 discharges provided by the holders as defined in
18 the lock-up agreement in Section 5B of the lock-up
19 agreement are not satisfied, or, two, if such
20 releases and discharges cease to be effective to
21 preclude the holders from pursuing any claim in
22 respect of GM Canada otherwise released pursuant
23 to Section 5B of the lock-up agreement, then in
24 either case, this consent shall automatically
25 cease to be effective."

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2 Q Okay. And what's the date on this
3 amendment? If you turn to the first page, which
4 is page 105 of 110.

5 A The heading recites that it's filed
6 June 25th. It's dated as of June 25th on the
7 first page.

8 Q And turn to the last page of the
9 agreement, the back. Do you see signatures there?

10 A Yes.

11 Q By whom?

12 A Export Development Canada, on the
13 back page. United States Department of the
14 Treasury on the preceding page.

15 Q And the date of the signature by
16 Export Development Canada?

17 A June 25, 2009.

18 Q Okay. So, this document, which is
19 part of the DIP credit facility --

20 A Um-hum.

21 Q -- expressly references the lock-up
22 agreement and the consent to a filing into
23 bankruptcy of GM Nova Scotia Finance; is that
24 correct?

25 A It does.

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2 Q And someone reading this document
3 would thereby be on notice that these transactions
4 were possible; is that correct?

5 MR. FISHER: Objection as to form.

6 A What transactions?

7 Q The transactions described in the
8 provision you just read, paragraph seven.

9 A Yes.

10 Q Do you recall reading paragraph seven
11 at the time?

12 A As I sit here today, no, I don't.

13 Q But you do recall having reviewed
14 these documents?

15 A I reviewed the final order, itself,
16 in some detail and the document attached to it as
17 the DIP credit agreement in some detail. I was
18 involved in the negotiation of these documents
19 prior to the entry of the order.

20 I have since had to comb through them
21 in connection with the term loan litigation. So,
22 my memory is not precise as to exactly when I
23 became familiar with what pieces of this, because
24 there has been so much focus on it in the last
25 year.

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2 another company who isn't a debtor.

3 Q You had an internal meeting about it
4 but nobody bothered to read the document; is that
5 your testimony?

6 A No. You asked whether we reviewed
7 drafts before it was filed. And I know I didn't,
8 and I don't know whether any of my colleagues did.

9 Q Okay. Did anyone review the version
10 as filed of this exhibit?

11 A I'm certain that somebody in the
12 Creditors Committee team reviewed this. Whether
13 it was someone at Kramer Levin or someone at FTI
14 working with us, I don't know. But I know this
15 document was reviewed by someone in the Creditors
16 Committee team, yes.

17 Q This was a document that was publicly
18 filed on August 7, 2009.

19 A Yes.

20 Q Which is two months before October of
21 2009; is that correct?

22 A Yes.

23 Q Did Kramer Levin take any actions
24 after reviewing this exhibit?

25 A With respect to what?

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2 Q Anything. Did you -- what did you do
3 after you reviewed this document?

4 A Well, as a matter of the sequence of
5 events, after this -- after we reviewed this
6 document, I think we moved to compel Treasury to
7 respect our rights in the term loan litigation.

8 Q What about in connection with the
9 Nova Scotia notes or with respect to the lock-up
10 agreement?

11 A Prior to October of 2009?

12 Q Yes.

13 A No.

14 Q Did you make inquiry of Weil Gotshal
15 or anyone else concerning the contents of this, of
16 this 8-K?

17 A Not to my knowledge.

18 Q Why not?

19 A Well, this was an 8-K that was filed
20 by a non-debtor, which Weil Gotshal at -- we were
21 told Weil Gotshal was not counseling the new
22 General Motors, so it would have been odd for us
23 to call them and ask them about a document filed
24 by a company they weren't a party to.

25 It was an informational document we

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2 viewed as important for what the value of our
3 equity might be.

4 Q And so therefore -- strike that. New
5 GM, as you just testified, New GM was the issuer
6 of the new equity that the unsecured creditors
7 were going to receive; isn't that correct?

8 A Yes.

9 Q And didn't you consider it material
10 to the value of that equity in terms of what
11 public disclosures new GM would be making?

12 A Yes.

13 Q Did you view this as a material
14 document?

15 A Yes.

16 Q And the contents of the information
17 contained in this document were material?

18 A Not every piece of information in
19 this document is material. The document taken as
20 a whole was material to the value of our equity,
21 yes.

22 Q How did you pick and choose which
23 provisions or which information was material and
24 which wasn't?

25 A Well, the value of the equity itself

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2 was filed on August 9th, 2011?

3 A I'm sure that -- yes. The answer is
4 yes.

5 Q August 11, 2009.

6 A Yes.

7 Q And there is a direct description and
8 reference to the claims of the Nova Scotia
9 noteholders, of the lock-up agreement, and the --
10 and other information relating to the transactions
11 under the lock-up agreement; is that correct?

12 A Yes.

13 Q Did you or anyone else at Kramer
14 Levin speak with -- have any communication with
15 anyone regarding the contents of this interim
16 report after reviewing it in August of 2009?

17 A The cover e-mail reflects that it was
18 transmitted to the Creditors Committee. We may
19 have had conversations of what's contained. We
20 probably did have conversations about what was
21 contained in this report with the committee, and
22 we probably did also with Weil, just because of,
23 I'm sure there were questions.

24 Q And that would have been in August?

25 A It could have been in August. It

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2 could have been in September. Probably was in
3 August. This thing circulated August 12th.
4 Kramer Levin probably talked to FTI about it or
5 vice-versa.

6 Q Do you know or are you just
7 speculating?

8 A I could not testify today as to the
9 exact dates on which conversations or -- were had
10 or e-mails were sent, but I am sure that this
11 document was the subject of some discussions
12 between and among committee professionals and
13 committee members.

14 Q Did you consider the information
15 contained in this report regarding the Nova Scotia
16 notes and the lock-up agreement to be material?

17 A No.

18 Q Why not?

19 A Because we did not yet understand
20 what they meant.

21 Q But it does make specific reference
22 to the allowance of claims, doesn't it?

23 A It does.

24 Q You did not consider that to be
25 material?

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2 about the settlement he got at GM. I don't
3 remember exactly when that was. It may have been
4 in July of 2009, but I don't remember.

5 Q Did he mention an agreement, that
6 there was an agreement reached in GM with the Nova
7 Scotia noteholders?

8 A He mentioned the deal. Didn't
9 mention a particular agreement.

10 Q What was the deal that he mentioned
11 and described?

12 A I can't remember exactly what he
13 described. He described having a very good deal
14 in GM.

15 Q Just tell us what you remember.

16 A That's what I remember.

17 Q You don't remember anything else?

18 A I don't remember the details. He
19 didn't -- he didn't -- the conversation I had with
20 Dan wasn't we got this, we got that, we got the
21 other thing. It was we got a great deal in GM,
22 and we are going to get a great deal in Smurfit.

23 And I can't remember the details of
24 what he said to me. I'm not sure there were any,
25 but I can't remember what they were. But I know

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2 that we did have a conversation where he was
3 trying to compare the deal he got in GM with the
4 deal in Smurfit. And I can't remember what
5 details he gave me or not.

6 Q But he told you there was a deal in
7 GM?

8 A Oh, yes.

9 Q And did you do anything to educate
10 yourself as to what that deal was after your
11 conversation with Mr. Gropper?

12 A No.

13 Q Why not?

14 A If it happened in July, the answer is
15 no. If it happened after October, we were already
16 in process, so the answer is no.

17 Q Well, I'm assuming it happened in
18 July, so...

19 You didn't take any action to educate
20 yourself as to the terms of the settlement that
21 Mr. Gropper referred you to in his conversations
22 with you in July of 2009; is that your testimony?

23 A That is my testimony.

24 (KL Exhibit 16 marked for
25 identification as of this date.)

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2 But we ended up not spending a lot of
3 time on it, because GM was GM and not Chrysler.

4 Q What was your understanding as to how
5 the executory contracts -- who would determine
6 which executory contracts would be assumed and
7 assigned to New GM?

8 A GM management in conjunction with
9 Treasury.

10 Q Did the committee have any interest
11 in knowing which contracts were going to be
12 assumed or assigned at that time? And we are
13 talking now in the June time frame, before the
14 sale hearing. Other than the supplier contracts
15 that you have referred to.

16 A At the time, the answer is no, we
17 didn't.

18 Q Okay. Would it be fair to say that
19 the Asset Purchase Agreement, and the court order
20 authorizing or approving the Asset Purchase
21 Agreement, allowed New GM and Treasury and Old GM
22 to determine which contracts would be assumed and
23 assigned?

24 MR. FISHER: Objection.

25 A The document says what it says. I

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2 have already testified that was my understanding
3 as to what the deal was.

4 Q And the committee at one time filed a
5 limited objection to the procedures on assumption
6 of assignments; isn't that correct?

7 A Yes.

8 Q And what was that objection?

9 A I think we wanted more transparency
10 in conjunction with assignment and assumption.
11 But the focus of the committee was really on
12 supplier issues more than anything else. We
13 didn't focus on anything else.

14 Q You didn't focus on other contracts?

15 A No. There may have been -- that's
16 not quite true. There were some leases, there
17 were some real property leases where initially New
18 GM seemed to want to have the best of both worlds,
19 they were going to assume the lease but leave some
20 liabilities behind, and we weren't crazy about
21 that. But other than that, no.

22 Q Did the procedures that were finally
23 agreed to and incorporated into the bankruptcy
24 court's orders require any notice to be given to
25 the Creditors Committee of contracts to be assumed

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2 and assigned to New GM?

3 A In preparing for this deposition, I
4 understood that it does not provide for any such
5 notice. I know that that was not a focus of
6 our -- that was not a material concern of the
7 committee at the time, in June.

8 Q Okay.

9 (KL Exhibit 17 marked for
10 identification as of this date.)

11 Q Can you identify what's been marked
12 as Exhibit 17.

13 A Exhibit 17 appears to be an exchange
14 of e-mails. It's technically an e-mail from Ronit
15 Burkovich to Lauren Macksoud, dated October 6,
16 7:24 p.m., which contains a trail of e-mails plus
17 an attachment, which is the lock-up agreement, or
18 appears to be the lock-up agreement?

19 Q Who is Lauren Macksoud?

20 A Lauren Macksoud is an associate at
21 Kramer Levin.

22 Q Bankruptcy associate?

23 A Yes.

24 Q This e-mail attaches the lock-up
25 agreement?

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2 with the Nova Scotia claims review after the
3 conference call with Weil Gotshal and others
4 referred to in the previous exhibit?

5 A Yes.

6 Q Did Kramer Levin provide any advice,
7 don't tell me what it was, but did Kramer Levin
8 provide any advice to the Creditors Committee in
9 connection with potential objections or challenges
10 to the Nova Scotia noteholders' claims?

11 A Yes.

12 Q Okay. Would you kindly look at this
13 Exhibit 23 and tell me if you can identify that
14 exhibit?

15 A 23 is an e-mail from Lauren Macksoud
16 to the GM committee dated December 15th, 2009,
17 which, itself, forwards -- it is a redacted text
18 here, but attached to that e-mail was another
19 e-mail, or in the e-mail chain is another e-mail
20 from Jennifer Sharret to the GM committee, timed
21 Tuesday, December 15, 2009 at 12 a.m., relating to
22 a committee call on December 16th, 2009, at
23 10 a.m.

24 Q Okay. Was the subject of the Nova
25 Scotia notes discussed at this meeting?

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2 A Yes.

3 Q Did you, or anyone else at Kramer
4 Levin, make a presentation to the committee on the
5 Nova Scotia notes at this meeting?

6 A Yes.

7 Q Was there a recommendation made to
8 the committee concerning any course of action with
9 respect to challenges to the Nova Scotia notes?

10 A Yes.

11 Q And was that recommendation made by
12 Kramer Levin?

13 A Yes.

14 Q Was that you?

15 A Yes.

16 Q Anyone else at Kramer Levin?

17 A Well, it reports that Amy Caton was
18 there, and I am sure that she was, and I believe
19 Lauren Macksoud was there, too. Yes. It was a
20 telephonic meeting, so we were all in my office.
21 This one I happen to recall quite clearly.

22 Q By the way, at this point, did you
23 know who held GM Nova Scotia bonds?

24 A I didn't have a list. We knew that
25 Aurelius had filed a pleading, so we knew that

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2 they held.

3 Q Did you know whether Fortress had
4 also filed the same pleading?

5 A Might have done. The focus was on
6 Aurelius, again, might have done.

7 Q How about Morgan Stanley?

8 A Might have done.

9 Q How about Appaloosa?

10 A Might have done. As I said before,
11 it was a greater includes the lesser issue.

12 Q Did the committee take any action at
13 this meeting with respect to any of the
14 recommendations made by Kramer Levin at this
15 meeting?

16 A I believe the committee authorized
17 counsel to prepare objections to the claims.

18 Let me rephrase that slightly.

19 The way the committee process worked
20 is that we would give a recommendation, and they
21 would endorse a recommendation, but not actually
22 authorize the filing of pleading until we had
23 actually circulated it to them. So, it's probably
24 an overstatement to say that they authorized the
25 filing of an objection because no objection had

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2 yet been drafted.

3 Q Did Kramer Levin undertake, after
4 this meeting, to draft any such pleading?

5 A No, not that I recall. We filed a
6 pleading with respect to the mechanics of filing
7 proofs of claim, but with respect to objecting to
8 the allowance of the claims under the various
9 theories that later transpired, no, we did not
10 draft it.

11 Q Why not?

12 A Because we were turning it over to
13 conflicts counsel.

14 Q Why?

15 A Judge Gerber asked me that question
16 at the status conference.

17 Q I wasn't at the status conference.

18 A I know, that's why I am telling you.

19 He said, "Why aren't you doing it?"

20 And I said, "because Aurelius is a
21 substantial actor on the Nova Scotia side."

22 And he said, "you don't have to say
23 anything more."

24 And the reason that he said that is
25 that I had just finished representing Aurelius in

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2 to them or on their behalf, including the
3 350 million-dollar consent fee," do you believe
4 that that was a true and correct statement?

5 A It is not a true and correct
6 statement.

7 Q That's because the debtors' estate
8 has no avoidance claims against the noteholders,
9 does it?

10 A That is correct.

11 Q Mr. Mayer, at what point in time did
12 Kramer Levin inform Weil Gotshal, or anyone else
13 on behalf of the debtors, that it had a conflict
14 and was no longer going to represent the committee
15 in connection with challenges to the GM Nova
16 Scotia notes?

17 A I don't -- I don't recall exactly
18 when. I am sure it was relative early in the
19 process of determining that there could be an
20 objection to the claim.

21 Q Was that before or after December 15
22 or 16, 2009?

23 A I can't say precisely. I don't know.
24 But I know it was early.

25 Q Was it in 2009?

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2 A I don't know for sure.

3 Q You referred earlier, you testified
4 earlier about a status conference held --

5 A Um-hum.

6 Q -- before Judge Gerber in which you
7 stated that you were going to be handing this
8 these matters over to conflicts counsel. Do you
9 recall what that status conference occurred?

10 A Yeah, actually, now that you mention
11 it, that is going to be put a date on it.

12 I am pretty sure that that status
13 conference occurred in November of 2009, because I
14 -- it was in connection with a haggling over the
15 budget for post effective date legal work, and I
16 disclosed to the court what Kramer Levin would and
17 would not be doing in conjunction with post
18 effective date legal work.

19 And, so, it was probably -- I think
20 that is right. It probably was around, it was in
21 November, I think.

22 Q 2009?

23 A Yeah. I think, yeah.

24 Q Was Weil Gotshal present at that
25 status conference?

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2 time, with respect to what?

3 Q If, prior to the sale, you were aware
4 that GM Canada was entitled to receive large tax
5 refund, would you have considered that to be
6 significant?

7 A No.

8 Q Why not?

9 A Because the basic deal was we got
10 equity securities representing 20 percent of New
11 GM, and we managed to negotiate for the adversary
12 proceeding against the term lenders, and enough
13 cash to get us through the case, and that was it.
14 And everything else went to New GM or to the DIP
15 lenders, and the unsecured creditors never saw any
16 of it. So, whatever GM Canada had would not have
17 come to our -- would not have registered on our
18 register on radar screen. It was so unimportant
19 with everything else we had to worry about.

20 Q Well, the monies that were allegedly
21 transferred from GM U.S. to GM Canada with which
22 to pay the consent fee, wouldn't those, even if
23 those -- if those dollars had not been paid to GM
24 Canada, would those dollars have gone to the
25 unsecured creditors or would those dollars have

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2 gone to U.S. Treasury or to New GM?

3 A It would have gone to U.S.

4 Treasury/Canada as DIP lenders or New GM.

5 Q So, the unsecured creditors would not
6 have received any additional benefit if those
7 monies had remained in Old GM at the time of the
8 bankruptcy; is that correct?

9 A That is correct.

10 Q Okay. Have you ever been involved in
11 a Canadian bankruptcy case, a case under the
12 Bankruptcy Insolvency Act?

13 A What do you mean by "involved"?

14 Q Did you ever represent any parties in
15 connection with a case under the Bankruptcy
16 Insolvency Act of Canada, whether it be the
17 creditors or the company or a trustee?

18 A Is the Bankruptcy Insolvency Act
19 different from CCAA?

20 Q Yes, it is.

21 A I'm not sure. There have been
22 several Canadian proceedings. I don't think any
23 of them involved the BIA, but I am not sure.

24 Amendment to the last answer. If
25 Smurfit was a BIA case, then I did represent the

C E R T I F I C A T E

STATE OF NEW YORK)

: SS.

COUNTY OF NEW YORK)

I, BONNIE PRUSZYNSKI, a Notary
Public with and for the State of New York,
do hereby certify:

That THOMAS M. MAYER, the witness
whose deposition is hereinbefore set forth,
was duly sworn by me and that such deposition
is a true record of the testimony given by
the witness.

I further certify that I am not related
to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 1st of June, 2012.

Bonnie A Pruszyński

Bonnie Pruszyński

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3

WITNESS

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BY MR. ZIRINSKY

5

5

6

E X H I B I T S

7

KL Exhibit 1 Appointment of

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Creditors

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KL Exhibit 2 Application of the

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Official Committee of

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Unsecured Creditors of

13

General Motors for an Order

14

Authorizing and Approving

15

the Employment and Retention

16

of Kramer Levin Naftalis &

17

Frankel LLP as Counsel Nunc

18

Pro Tunc to June 3, 2009

19

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KL Exhibit 4 CC000690-692

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KL Exhibit 5 Correction and

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Supplement to the First

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Interim Application of

24

Kramer Levin Naftalis &

25

Frankel LLP as Counsel for

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3 Unsecured Creditors for
4 Allowance of Compensation
5 for Professional
6 Services...from June 30,
7 2009 through September 30,
8 2009

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